

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL KERBY,

Plaintiff,

v.

PARSONS CORPORATION,

Defendant.

NO. C06-687MJP

ORDER ON PARSONS  
CORPORATION'S MOTION TO  
RECONSIDER RULING RE FINAL  
WORKING CAPITAL STATEMENT

This matter comes before the Court on Defendant Parsons Corporation's "Motion to Reconsider Ruling Re Final Working Capital Statement." (Dkt. No. 98.) Defendant seeks reconsideration of a portion of the Court's order of July 16, 2007. (Dkt. No. 94.) Pursuant to Local Civil Rule 7(h), the Court requested a response from Plaintiff regarding this motion. Having reviewed the materials submitted by the parties and the underlying order, the Court DENIES Defendant's motion for the reasons stated below.

**Background**

The Court's order of July 16, 2007, granted in part and denied in part Plaintiff's motion for summary judgment on Defendant's counterclaims. Among other things, the Court held that Defendant could not base its breach of contract counterclaim on its allegation that the Shareholders breached Section 1.6 of the parties' Stock Purchase Agreement (SPA). (Order at 6.) Section 1.6 of the SPA required the Shareholders to submit a Final Working Capital Statement (FWCS) to Defendant. Section 1.6(c) of the SPA provided that the FWCS shall be deemed "binding and conclusive" within

1 30 days of its receipt. Id. The Court found that this provision “precludes Parsons from challenging  
2 the Shareholders’ calculation of the FWCS, since the 30 day window for contesting the FWCS has  
3 long since passed.” Id.

4 In its opposition to Plaintiff’s motion, Defendant argued that it could challenge the FWCS on  
5 the theory that the Shareholders committed fraud in creating it. However, the Court observed that  
6 New York law (which governs the SPA) requires fraud to be pled with particularity, including the  
7 defendant’s knowledge of the alleged misrepresentation. The Court noted that Defendant “had not  
8 pled that the Shareholders knew of the falsity of their alleged misrepresentations when calculating the  
9 FWCS.” Id. The Court concluded “[b]ecause Parsons has not pled the knowledge element of fraud  
10 with respect to the FWCS, it cannot attack the [FWCS] as a product of fraud” and that the FWCS  
11 “must be deemed binding and conclusive as required by SPA section 1.6(c).” Id. at 7. Defendant now  
12 seeks reconsideration of this ruling.

### 13 Analysis

14 Under Local Civil Rule 7(h), motions for reconsideration are disfavored and will ordinarily be  
15 denied in the absence of a showing of manifest error in the prior ruling or a showing of new facts or  
16 legal authority which could not have been brought to the Court’s attention earlier with reasonable  
17 diligence. The Court evaluates Defendant’s motion consistent with this standard.

18 Defendant argues that the Court erred for two reasons: (1) the relevant question on Plaintiff’s  
19 summary judgment motion did not concern the sufficiency of pleading, but whether there was a  
20 genuine issue of material fact that the FWCS was “tainted by fraud”; and (2) “the requirement that  
21 fraud be pled with particularity is a principle of tort law applicable to claims seeking affirmative  
22 recovery for fraud and has not been extended to claims for breach of contract in which a party seeks to  
23 avoid the application of a particular contract clause by alleging that the other contracting party  
24 engaged in fraudulent conduct.” (Motion at 2-3.)

1 The Court finds Defendant's first point unpersuasive. Plaintiff's summary judgment motion  
2 argued that Defendant could not challenge the FWCS because Defendant had not objected to the  
3 FWCS within the time prescribed by Section 1.6(c) of the SPA. In its response, Defendant argued for  
4 the first time that it had not been able to challenge the FWCS earlier due to alleged fraud by the  
5 Shareholders. In reply, Plaintiff noted that Defendant had not pleaded facts supporting fraud in its  
6 counterclaims. Because Defendant raised fraud issues for the first time in its response to Plaintiff's  
7 summary judgment motion, the Court considered whether Defendant had sufficiently alleged fraud in  
8 its counterclaims.

9 Defendant also asserts that the requirement that fraud be pled with particularity is a "principle  
10 of tort law" that is applicable to "claims seeking affirmative recovery for fraud." However, the  
11 pleading requirements for fraud are not limited to such claims. Fed. R. Civ. P. 9(b) provides that "[i]n  
12 all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with  
13 particularity." As Plaintiff notes, courts have held that "Rule 9(b) extends to all averments of fraud or  
14 mistake, whatever may be the theory of legal duty – statutory, common law, tort, contract, or  
15 fiduciary." Frota v. Prudential-Bache Secs., Inc., 639 F. Supp. 1186, 1193 (S.D.N.Y. 1986). See also  
16 Vess v. CIBA-GEIGY Corp., USA, 317 F.3d 1097, 1103-04 (9th Cir. 2003) (Rule 9(b) applies to any  
17 claim "grounded in fraud"). Defendant offers no persuasive authority indicating that the fraud  
18 pleading requirements are inapplicable to the situation presented here, where Defendant is asserting  
19 that fraudulent conduct by the Shareholders prevented Parsons from challenging the FWCS within the  
20 time prescribed by the SPA.

### 21 Conclusion

22 Defendant has not identified manifest error in the Court's order, nor has it provided new facts  
23 or legal authority which could not have been brought to the Court's attention earlier through  
24 reasonable diligence. Therefore, Defendant's motion for reconsideration of the Court's July 16th  
25 order is DENIED.

1 The Clerk is directed to send copies of this order to all counsel of record.

2 Dated: September 6, 2007

3 s/Marsha J. Pechman  
4 Marsha J. Pechman  
5 United States District Judge  
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